

ARKANSAS SUPREME COURT

No. CACR 05-781

LARRY WAYNE STEPHENS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 28, 2007

PRO SE MOTION FOR ACCESS TO
RECORD [CIRCUIT COURT OF
LONOKE COUNTY, CR 2004-482]

MOTION DENIED.

PER CURIAM

A jury convicted petitioner Larry Wayne Stephens of rape, kidnapping, terroristic threatening and domestic battering. The Arkansas Court of Appeals affirmed the judgment. *Stephens v. State*, CACR 05-781 (Ark. App. Mar. 22, 2006). Petitioner now brings this pro se motion for access to the record in that appeal, requesting that we provide photocopies of the record and transcripts so that he may prepare briefs in conjunction with a habeas corpus proceeding and pursue a belated appeal concerning a petition for postconviction relief.¹ Providing petitioner with access to the materials would require photocopying it at public expense inasmuch as he is incarcerated and not in a position to examine the material in our clerk's office, so we treat the motion as one for photocopies at public expense.

¹ For clerical purposes, the motion has been filed under the docket number assigned to the direct appeal of the judgment that was lodged in the court of appeals. This court decides all motions for photocopying at public expense because such motions are considered to be requests for postconviction relief. *See Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981) (per curiam).

A petitioner is not entitled to access a trial record unless there is a specific point which cannot be raised in a postconviction proceeding without the record or some portion of it. *See Thomas v. State*, 328 Ark. 753, 945 S.W.2d 939 (1997) (per curiam). We do not provide a copy of the transcript to facilitate a postconviction proceeding without a showing that the record is necessary and that specific anticipated points cannot be properly raised without access to the transcript. *See id.* It is well settled that a petitioner is not entitled to photocopying at public expense unless he or she demonstrates some compelling need for *specific* documentary evidence to support an allegation contained in a petition for postconviction relief. *See Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985) (per curiam). Petitioner here has provided a copy of an unpublished case in which we granted access because the request was made by an appellant who required the transcript in order to prepare his abstract for the brief in the appeal of an order denying his petition under Ark. R. Crim. P. 37.1. Petitioner's situation is not comparable.

Petitioner states that he requires the record to prepare briefs that he intends to use to pursue a habeas proceeding and a belated appeal. Petitioner has no appeal pending in this court, although he has tendered a record on an order denying relief on a Rule 37.1 petition. One of our staff attorneys notified petitioner that the notice of appeal was not timely filed and our clerk did not accept the record for filing. If petitioner intends to file a motion for belated appeal, he is not required to abstract the record, and briefs are not filed unless the motion is granted. If petitioner intends to pursue a habeas proceeding in circuit court, he is not required to provide an abstract with his petition. If he requires a specific portion of the record in order to raise a point in a petition, he has not identified either the point he wishes to raise or the specific portion of the record he requires for that point. Accordingly, we cannot say that petitioner has shown the required need for the transcript or

any part of the record.

It should be noted that when an original action has been filed in this court, the material pertaining to it remains permanently on file with the clerk, unless it is being maintained under seal. Persons may review the material in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of a material on file here may write this court, remit the photocopying fee, and request that the copy be mailed to the prison. All persons, including prisoners, must bear the cost of photocopying. *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (per curiam).

Motion denied.